

ELLIOT ENOKI (1528)
Acting United States Attorney
District of Hawaii

MICHAEL F. ALBANESE (9421)
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
Email: michael.albanese@usdoj.gov

Attorneys for Defendant / Third-Party Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROSENDA SAMUEL, Individually) CIVIL NO. 15-00141 DKW-KJM
and as Special Administrator)
of the Estate of RIENDA SUPU;) FINDINGS AND RECOMMENDATION
and LEWIS SAMUEL,) GRANTING DEFENDANT UNITED
Plaintiffs,) STATES OF AMERICA'S PETITION
vs.) FOR DETERMINATION OF GOOD
FAITH SETTLEMENT
UNITED STATES OF AMERICA;)
JAMES MORRISON, M.D.; JOANN)
SARUBBI, M.D.; KIRK WEBER,)
M.D.; and DOE DEFENDANTS 1-)
100;)
Defendants.)

UNITED STATES OF AMERICA,)
Third-Party Plaintiff)
vs.)
HAWAII HEALTH SYSTEMS)
CORPORATION dba HILO MEDICAL)

CENTER,
Third-Party Defendant)

FINDINGS AND RECOMMENDATION GRANTING DEFENDANT UNITED STATES OF
AMERICA'S PETITION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

Defendant United States of America's Petition for Determination of Good Faith Settlement, filed August 4, 2017 [Dkt. No. 178] came on for a hearing on September 8, 2017 at 10:00 am before the Honorable Magistrate Judge Kenneth J. Mansfield. Assistant United States Attorney Michael F. Albanese appeared on behalf of Defendant United States of America (the "United States"), Malia E. Schreck, Esq. appeared on behalf of Defendant Dr. Weber, Ronald T. Michioka, Esq. appeared on behalf of Defendant Dr. Sarubbi, John Burke, Esq. appeared (via telephone) on behalf of Defendant Dr. Morrison, Kristin S. Shigemura, Esq. appeared on behalf of Third-Party Defendant Hawaii Health Systems Corporation ("HHSC"), and Janice D. Heidt, Esq. appeared on behalf of Plaintiffs.

Defendant Sarubbi filed a Statement of No position on August 14, 2017 [Dkt. No. 181].

Plaintiffs filed a Statement of No Opposition on August 15, 2017 [Dkt. No. 183].

Defendant Morrison filed a Statement of No Opposition on August 15, 2017 [Dkt. No. 184].

Third-Party Defendant HHSC filed a Statement of No Objection on August 16, 2017 [Dkt. No. 185].

Defendant Weber filed a Statement of No Position on August 16, 2017 [Dkt. No. 186].

No opposition was filed against the United States' Petition for Determination of Good Faith Settlement (the "Petition").

The Court having considered the Petition, the memorandum in support thereof, the record in the above-captioned proceeding, the lack of opposition or objection, and the arguments of counsel, FINDS and RECOMMENDS that the Petition be GRANTED as follows:

1. After mediation before this Court and through private mediation with Keith Hunter, a binding settlement agreement, as set forth more fully in the Petition, was reached between the Plaintiffs and the United States on or about June 9, 2017. See Dkt. No. 160.

2. The Court finds and concludes, based upon the totality of circumstances and the factors set forth in Troyer v. Adams, 102 Haw. 399, 77 P.3d 83 (2003), that the settlement between the United States and the Plaintiffs in the above-captioned matter was made in good faith pursuant to Hawaii Revised Statutes ("HRS") § 663-15.5.

3. Pursuant to HRS § 663-15.5(d), the settlement between the United States and Plaintiffs shall (1) bar any other joint

tortfeasors or co-obligor from any further claims against the United States, except those based on a written indemnity agreement; and (2) result in the dismissal of all cross-claims filed against the United States, except those based on a written indemnity agreement.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, September 15, 2017.



/S/ Kenneth J. Mansfield
Kenneth J. Mansfield
United States Magistrate Judge

ROSENDA SAMUEL, Individually and as Special Administrator of the Estate of RIENDA SUPU; and LEWIS SAMUEL v. USA; CIVIL NO. 15-00141 DKW-KJM; Findings And Recommendation Granting Defendant United States Of America's Petition For Determination Of Good Faith Settlement